

Memorandum

City of Tempe

Date: January 3, 2008
To: Mayor and Council
From: Charles W. Meyer, City Manager
Cc: Andrew Ching, City Attorney
Jan Hort, City Clerk
Louraine Arkfeld, Presiding City Judge
Subject: Severance Policy, City Council IRS January 10, 2008

Upon starting as City Manager, I have reviewed Tempe's various governing documents, including those relevant portions of the Personnel Rules and Regulations and the City Charter and Code regarding unclassified employees and severance agreements. This review has convinced me this is a good time to evaluate our current policies to see if any changes need to be made. The following memo will address current policy, proposed changes, and explanation of how proposed changes would be carried out.

Background

Employees of the City are designated either as Classified or as Unclassified. Most City employees are in the Classified Service category and as such have access to the merit board to resolve differences. The balance of City employees are in the Unclassified Service which can be then divided into Elected Officials, Council Appointees and At-will positions. Elected officials have access to a grievance process every four years. Three of the four Council appointees are covered by employment agreements that are the exclusive purview of the Council, and the Judges have a different appointment process. So it is the remaining at-will positions enumerated in the attached memo dated June 26, 2006 that are the subject of this discussion.

According to the attached City Charter, Sec. 3.04, the City Manager is authorized to appoint, suspend, or remove all City employees and administrative officers "except as otherwise provided by law, this Charter, or personnel rules adopted pursuant to this Charter." The City Charter provisions are clear and require no additional clarification or amendment.

City Code Sec. 2-19, also attached, authorizes the City Manager to negotiate and execute severance agreements not to exceed six months salary or to seek Council authorization of an agreement exceeding six months.

There are no provisions of the Council adopted personnel rules that are directly applicable to this subject of severance agreements.

Discussion

When an unclassified, at-will employee separates from City employment they can:

- Resign or retire voluntarily, which is usually the case;
- Be involuntarily terminated by the appointing authority, typically undertaken in cases of wrongdoing;
- Resign involuntarily, which could result in a negotiated severance agreement.

Severance agreements should not be applied in the case of voluntary resignations or retirements. They are not intended to be a bonus package for retiring at-will employees.

Severance agreements should also not be a substitute for taking necessary action in response to wrongdoing. While there could be a circumstance in which it would serve the City's interest to consider a severance package in the case of wrongdoing, that should be a rare circumstance. Severance agreements should be considered for unclassified, at-will employees who are being asked to resign because, as provided in City Code Sec. 2-19, the City Manager "deems it necessary for the good of the city."

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The City Code would typically be written so broadly because it recognizes that these positions are leadership and confidential positions. It is difficult to quantify that an individual's leadership skills are inadequate or that they have lost the confidence of their appointing authority. Nonetheless, it is critical that the City have the flexibility to achieve the right fit with such positions. Most other employees of the City have much more specific job responsibilities that make it more practical to substantial competence. These employees have access to the Merit Board to help determine that the disciplinary action being taken is appropriate to progressive discipline. At-will employees have no such rights.

The purpose of providing the severance agreement is to recognize that the decision for involuntary separation is not subject to appeal under the City's policies and also because it often takes longer to find alternative employment in management positions.

While Arizona recognizes at-will employment, this concept has been modified to allow for termination of employment for either good cause or no cause, but not for bad cause, such as discrimination, sexual harassment, retaliation, etc. At-will employees can still assert their termination was for bad cause and bring claims to that effect, even if they leave with a severance agreement. The preferred means to prevent such a scenario would be to require a release and waiver of all claims be included in any severance agreement.

The purpose of this policy discussion is to clarify the various forms by which at-will employees may separate from the City, identify under what circumstances a severance agreement should be considered and to clarify that if an employee chooses to enter into a severance agreement with the City that we would require them to waive any claims against the City.

The employees of the City Attorney's Office and the City Clerk's Office would be covered by these same provisions of the City Code even though they are not the direct appointees of the City Manager. Both of these Council appointees have indicated they support this change in policy. The Presiding Judge and other Bench Officers are appointed to a fixed term. The Presiding Judge has indicated that she supports the policy change for the other at-will court employees.

Recommendation

I would recommend that the City Council provide additional guidance and parameters regarding severance agreements to the City Manager under Sec 2-19 of the City Code. Specifically, I would recommend that the limitation on severance agreements be modified to require an employee entering into such an agreement to sign a waiver of claim against the City. I would additionally recommend that the City Council amend my employment agreement to conform the severance provision to the City Code section limiting severance agreements to six months salary (currently nine months.)

Action Requested

Council is requested to advise the City Attorney and City Manager whether they wish to have ordinances prepared for an upcoming Council meeting amending the City Code and the City Manager's employment agreement as recommended.

CITY CHARTER

Sec. 3.04. Powers and duties of the city manager.

The city manager shall be the chief administrative officer of the city. He shall be responsible to the council for the administration of all city affairs placed in his charge by or under this Charter or by ordinance. He shall have the following powers and duties:

- (a) He shall appoint and, when he deems it necessary for the good of the city, suspend or removal all city employees and appointive administrative officers except as otherwise provided by law, this Charter, or personnel rules adopted pursuant to this Charter. He may authorize any administrative officer who is subject to his direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency.
- (b) He shall direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this Charter or by law.
- (c) He shall attend all council meetings and shall have the right to take part in discussion but may not vote.
- (d) He shall see that all laws, provisions of this Charter and acts of the council, subject to enforcement by him or by officers subject to his direction and supervision, are faithfully executed.
- (e) He shall prepare and submit the annual budget and capital program to the council.
- (f) He shall submit to the council and make available to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year.
- (g) He shall make such other reports as the council may require concerning the operations of city department, offices and agencies subject to his direction and supervision.
- (h) He shall keep the council fully advised as to the financial condition and future needs of the city and make such recommendations to the council concerning the affairs of the city as he deems desirable.
- (i) He shall perform such other duties as are specified in this Charter or may be required by the council.

CITY CODE

Sec. 2-19. City manager.

(a) The city manager, in addition to the duties and obligations set forth in the city charter and pursuant to city charter § 4.01(b), the city manager is hereby authorized to establish such working groups and divisions under his direct supervision as he may deem appropriate from time to time. The city manager directly supervises and oversees support staff, divisions and departments which are not otherwise assigned to an assistant city manager.

(b) The city manager is hereby authorized to issue an administrative memorandum providing for the payment of severance pay and benefits and is hereby authorized to negotiate and execute severance agreements with city employees so long as the amount of severance pay does not exceed an amount equal to the employee's salary for a six (6) month period. Any negotiated severance pay which exceeds the aforementioned amount shall require approval by the city council.



Human Resources Administration

Date: June 26, 2006

Subject: Unclassified Service

Effective Date: June 12, 2003

Revised Date: July 20, 2006

In accordance with the Tempe Personnel Rules and Regulations, the following staff positions (as determined by the City Manager) are unclassified, at-will positions:

City Attorney & City Clerk

Deputy City Attorney
City Prosecutor

City Court

Court Manager
Deputy Court Managers

City Manager's Office

Assistant City Manager
Executive Assistant to Mgr/Mayor I/II

Community Development

Community Development Manager
Deputy Community Development Managers

Community Relations

Community Relations Manager
Communication and Media Relations Director
Executive Assistant to Mgr/Mayor I/II
Government Relations Director
Mayoral/City Council Aide I/II
Mayor's Chief of Staff
Neighborhood Program Director

Community Services

Community Services Manager
Deputy Community Services Managers

Development Services

Development Services Manager
Deputy Development Services Managers

Diversity

Diversity Manager

Financial Services

Financial Services Manager
Deputy Financial Services Managers

Fire

Fire Chief
Assistant Fire Chiefs

Human Resources

Human Resources Manager
Deputy Human Resources Manager

Information Technology

Information Technology Manager
Deputy Information Technology Managers

Internal Audit

Internal Audit Manager

Parks & Recreation

Parks & Recreation Manager
Deputy Parks & Recreation Managers

Police

Police Chief
Assistant Police Chiefs
Commanders
Police Legal Advisor
Fiscal/Research Administrator

Public Works

Public Works Manager
Deputy Public Works Managers
Facility Maintenance Director
Fleet Director

Water Utilities

Water Utilities Manager
Deputy Water Utilities Manager

Approved: Tom P. Gendron for Date: 7/25/06
Valerie Hernandez, Human Resources Manager

Approved: Will Manley Date: 7-24-06
Will Manley, City Manager